U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
RECEIVED - LAKE CHARLES

NOV 14 2007

ROBERT H. SHEMWELL, CLERK
BY DEPUTY

2:07cv1915

Party#

THOMAS VICE : 14TH JUDICAL DISTRICT COURT

VS. NO.: 2007-5574F : PARISH OF CALCASIEU

STATE FARM FIRE AND CASUALTY COMPANY SEP 24 2007 : STATE OF LOUISIANA

FILED: __________ : DEPUTY CLERK

PETITION FOR DAMAGES

The petition of THOMAS VICE, a person of the full age of majority, domiciled in the Parish of Calcasieu, State of Louisiana, and who, at all material times hereto, the owner of the insured premises located at 313 Big Woods Road, Vinton, Louisiana, and are referring to the home owners' claims for that premises, respectfully represents:

1.

The following party is made a defendant in this suit:

STATE FARM FIRE AND CASUALTY COMPANY, a foreign insurer authorized to do and doing business in the State of Louisiana, who was at all times material hereto the petitioner's insurance provider of home owners' insurance;

2.

On or about September 24, 2007, Hurricane Rita passed through Calcasieu Parish, Louisiana, causing Petitioner's damages as more fully set forth hereinbelow.

3.

As of the date of the filing of these pleadings, defendant, STATE FARM FIRE AND CASUALTY COMPANY, has yet to engage in adequate loss adjustment of Petitioner's claims, as more fully set forth hereinbelow, and thus defendant, STATE FARM FIRE AND CASUALTY COMPANY, is in violation of La. R.S. 22:658, which requires that "In the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim within thirty days after notification of loss by the claimant. Failure to comply with the provisions of this Paragraph shall subject the insurer to the penalties provided in R.S. 22:1220."

4.

Defendant made inspection of the damaged premises and made payment to Petitioner upon their initial adjustment of Petitioner's "dwelling extension" coverage, however, that adjustment was inadequate.

SCANNED
OCT 01 2007

EXHIBIT
A

PROCESSED
DATE 9-28-07

Petitioner herein specifically avers that the value of an outbuilding for which Defendant made payment, was under-valuated and that an additional $1,892.48 is owed for the replacement thereof.

5.

Defendant made inspection of the damaged premises and made payment to Petitioner, under the "loss of use – additional living expenses" coverage, however, that adjustment was inadequate. Petitioner herein specifically avers that he is owed an additional $25,000 for living expenses relating to his loss of use of the insured premises.

6.

Defendant made inspection of the damaged premises and has refused to make payment to Petitioner for the limit of his "personal property" coverage, despite the condition of the dwelling, which included much of the roof being completely blown off, with the remainder of the roof severely damaged, evidencing the fact that all personal property contained within the dwelling was exposed to the wind driven rain and other elements during the State and Parish mandated evacuation period. Petitioner herein specifically avers that he is owed the coverage limit of his "personal property" coverage in the amount of $76,875.00.

7.

Defendant made inspection of the damaged premises and has failed to make payment to Petitioner for the limit of his "additional coverage" for debris removal, despite the condition of the inspected property, which included very large amounts of debris strewn over the property due to the hurricane force winds, as well as the need for demolition of the dwelling, which Defendant deemed as a total loss. Petitioner herein avers that he is entitled to the debris removal and demolition costs in the amount of $5,125.00.

8.

Pursuant to La R.S. 22:658 and La. 22:1220, defendant, STATE FARM FIRE AND CASUALTY COMPANY, is answerable in damages to Petitioner as a result of Defendant's breach of its duty to adjust, in good faith, Petitioner's claims incurred as a result of Hurricane Rita.

7.

The defendant's inspection of Petitioner's property, under the circumstances of the catastrophic losses caused by Hurricane Rita, waived Defendants right to a "sworn proof of loss," and Defendant was provided with the information necessary to adequately adjust this claim; alternatively, defendant has not provided Petitioner with a form to file a "sworn proof of loss" so as to comply with the provisions of its policy.

9.

The acts and/or omissions of defendant, STATE FARM FIRE AND CASUALTY COMPANY, have been arbitrary and capricious, without cause, and constitute a breach of Defendant's affirmative duties to promptly and fairly adjust Petitioner's claims within thirty (30) days after notification of loss by the claimant, and they have failed to pay Petitioner's damages within thirty (30) days after being provided with a satisfactory proof of loss.

10.

The Defendant's acts and/or omissions in failing to timely adjust Petitioner's claims, at all times material hereto, were with deliberate disregard of the welfare of Petitioner and further:

a) Were acts of bad faith;

b) Breached the insurer's duty to adjust claims fairly and properly;

c) Were arbitrary or capricious;

d) Disregarded Petitioner's valid claims upon which insurance coverage was based;

e) Were willful and unreasonable;

f) Evidenced an interest contrary to that of the insured;

g) Were a breach of Defendant's duties to pay the amount due within thirty days after the receipt of the required proof of loss and demand; and

h) Were substantially certain to lead to additional damage on the part of the insured as Defendant's failure to engage in proper loss adjustment prevented or hampered Petitioner from repairing his property and/or paying a mortgage indebtedness.

11.

Your Petitioner shows that these failures were arbitrary, capricious and without probable cause, entitling Petitioner to penalties in the amount of 50% of the unpaid amount, attorneys' fees and costs under La. R.S. 22:658 (B).

WHEREFORE, Petitioner prays for judgment herein in favor of THOMAS VICE and against defendant, STATE FARM FIRE AND CASUALTY COMPANY, in a sum adequate to compensate Petitioners for their aforementioned damages, together with legal interest from date of judicial demand until paid, for all costs of these proceedings and for all general and equitable relief;

PETITIONERS FURTHER PRAY that there be judgment herein in favor of Petitioners and against STATE FARM FIRE AND CASUALTY COMPANY:

DECLARING that defendant, STATE FARM FIRE AND CASUALTY COMPANY owes your Petitioners, its insureds, the proved amounts of personal property replacement, dwelling coverage, additional living expenses and other structures coverage;

DECLARING that defendant, STATE FARM FIRE AND CASUALTY COMPANY, has breached its duty as an insurer to adjust claims fairly and promptly;

DECLARING that defendant, STATE FARM FIRE AND CASUALTY COMPANY is in violation of La. R.S. 22:658;

DECLARING that defendant, STATE FARM FIRE AND CASUALTY COMPANY owes statutory penalties as provided by La. R.S. 22:658;

DECLARING that defendant, STATE FARM FIRE AND CASUALTY COMPANY owes statutory penalties as provided by La. R.S. 22:1220 unto Petitioners;

DECLARING that defendant, STATE FARM FIRE AND CASUALTY COMPANY's actions in failing to timely adjust Petitioners' claims were with deliberate insensibility and/or disregard of the welfare of Petitioners;

DECLARING that defendant, STATE FARM FIRE AND CASUALTY COMPANY's failure to engage in proper loss adjusting prevented or hampered Petitioners from repairing their property and was substantially certain to lead to additional losses by Petitioners;

FOR COST AND ATTORNEYS' FEES incurred in the prosecution of this suit;

FOR SUCH FURTHER RELIEF as this Honorable Court deems just, necessary and proper under the circumstances.

By his Attorneys,
BAGGETT, McCALL, BURGESS, WATSON & GAUGHAN
(A Professional Law Corporation)

BY: [signature]

ROGER G. BURGESS (3665)
ERIN M. ALLEY (23214)
3006 Country Club Road
Post Office Drawer 7820
Lake Charles, Louisiana 70606-7820
(337) 478-8888

PLEASE SERVE THE DEFENDANT AS INDICATED IN PARAGRAPH

THOMAS VICE	:	14TH JUDICAL DISTRICT COURT
VS. NO.: 2007-5574 F	:	PARISH OF CALCASIEU
STATE FARM FIRE AND CASUALTY COMPANY	:	STATE OF LOUISIANA
FILED: SEP 24 2007	:	Darnell Belmer DEPUTY CLERK

REQUEST FOR WRITTEN NOTICE
OF ASSIGNMENT AND WRITTEN NOTICE
OF ANY ORDER OR JUDGMENT MADE OR RENDERED

TO: Honorable Lynn Jones, Clerk
14th Judicial District Court
Calcasieu Parish Courthouse
Lake Charles, Louisiana

In accordance with the provisions of LSA - C.C.P. 1571 and 1572, you are hereby requested to give the undersigned, as counsel for Petitioners, THOMAS VICE, in the above-captioned matter, written notice, by mail, ten (10) days in advance of any date fixed for trial or hearing of the case, whether on exception, rules or the merits thereof.

In accordance with the provisions of LSA - C.C.P. 1914 and 1915, you are hereby additionally requested to send us immediate notice of any order or judgment made or rendered in this case on the entry of such order or judgment.

Respectfully submitted,

BAGGETT, McCALL, BURGESS,
WATSON & GAUGHAN
(A Professional Law Corporation)

BY: Erin M. Alley

ROGER G. BURGESS (3665)
ERIN M. ALLEY (23214)
3006 Country Club Road
Post Office Drawer 7820
Lake Charles, Louisiana 70606-7820
(337) 478-8888

BAGGETT, McCALL, BURGESS,
WATSON & GAUGHAN
A PROFESSIONAL LAW CORPORATION

WILLIAM B. BAGGETT
ROBERT C. McCALL
WILLIAM BAGGETT JR
ROGER G. BURGESS
WELLS T. WATSON
JEFFREY T. GAUGHAN
ERIN McCALL ALLEY
CHRISTOPHER C. McCALL
CHARLES B. CAPPEL
Of Counsel:
Justice (Ret.) JACK C. WATSON

September 24, 2007

BY HAND DELIVERY
Hon. Lynn Jones
Clerk of Court
Lake Charles, LA

6514
52

Re: Thomas Vice
Vs.
State Farm Fire & Casualty Company

Dear Mr. Jones:

Enclosed please find for filing in the above matter a Petition for Damages on behalf of my client, Thomas Vice.

Please return a copy, conformed as to filing, to our office for our records. The additional copy is for service upon the defendant, as instructed in the Petition.

I am also enclosing my firm check for initial filing fee deposit of $325.00

Sincerely,

Lisa J. Brown
Paralegal to Roger Burgess and Erin Alley

/ljb

enclosures

3006 Country Club Road 70605 • P.O. Drawer 7820 • Lake Charles, LA 70606-7820
(337) 478-8888 • FAX (337) 478-8946